

DEPARTMENT OF ALCOHOL AND DRUG PROGRAMS

Amendment of Section 13035, Title 9, California Code of Regulations

COUNSELOR CERTIFICATION – CERTIFYING ORGANIZATIONS

Final Statement of Reasons

BACKGROUND

In order to work as a counselor in an alcohol and other drug (AOD) treatment program, individuals are currently required to be certified by one of the certifying organizations listed in Section 13035(a), Title 9, California Code of Regulations (CCR). Section 13035 currently requires all certifying organizations to become accredited by the National Commission for Certifying Agencies (NCCA) by April 1, 2007 in order to continue certifying AOD counselors. This regulatory action amends Section 13035(b) and (c) by extending the date by which certifying organizations must be accredited by NCCA to September 30, 2007. This amendment took effect on an emergency basis on May 24, 2007. This final statement of reasons is part of the statement of compliance, which will make the amendment permanent.

STATEMENT OF NECESSITY

Because the NCCA accreditation process turned out to be more complicated, time consuming, and expensive than originally anticipated, only three of the ten certifying organizations listed in Section 13035 were able to obtain NCCA accreditation by April 30, 2007. The Department of Alcohol and Drug Programs (ADP) amended Section 13035 on an emergency basis, effective May 24, 2007. The amendment extended the time allowed for NCCA accreditation to September 30, 2007. That extension was needed in order to prevent a devastating workforce disruption in the AOD treatment field that could have forced many AOD treatment programs to reduce treatment services or go out of business completely, negatively impacting health, welfare, peace, and safety statewide. The full necessity for the emergency amendment is explained in the Initial Statement of Reasons, which is hereby incorporated by reference.

ADP is now making its emergency amendment of Section 13035 permanent. This rulemaking action is needed to protect the six additional certifying organizations that achieved NCCA accreditation between May 1 and September 30, 2007, so that they can continue certifying AOD counselors. Without making the emergency amendment effective on a permanent basis, those six certifying organizations, who certify a majority of the AOD counselors in California, would no longer be able to certify counselor and the workforce shortage and resulting health and welfare emergency described in the Initial Statement of Reasons could become a reality.

45-DAY PUBLIC COMMENT PERIOD AND PUBLIC HEARING:

The Department mailed a public notice and a copy of the initial statement of reasons and the proposed changes to all licensed and certified alcohol and drug programs, to all known certifying organizations, to all county alcohol and drug administrators, and to everyone else who had requested a copy of the proposed regulations. The Department also posted the public notice, the initial statement of reasons, and the proposed regulations on its web site. The Department made the proposed regulations available for public comment from June 8 through July 23, 2007.

SUMMARY OF PUBLIC COMMENTS AND ADP RESPONSES:

The Department received comments from two individuals. Those comments are summarized below, followed by the Department's response:

Commentor 1, Lori Phelps, California Association for Alcohol/Drug Educators. (CAADE)

a. Summary of Comment:

Commentor 1 supported the emergency amendment of Section 13035 and stated that failure to extend the deadline would have devastating consequences for the AOD workforce. Commentor 1 stated that the extension for NCCA accreditation would allow additional certifying organizations to become accredited, resulting in better educated, more qualified AOD counselors.

ADP Response:

ADP thanks Commentor 1 for her support.

Commentor 2, The Latino Constituency Committee.

a. Summary of Comment:

Commentor 2 stated that extending the date for NCCA accreditation to September 30, 2007 only accommodates the needs of certifying organizations currently recognized by ADP. Commentor 2 recommended extending the date for NCCA to December 30, 2007 to allow additional agencies to become accredited and recognized by ADP.

ADP Response:

ADP has decided not to make any additional changes to Section 13035 at this time because nine of the ten certifying organizations listed in Section 13035(a) obtained NCCA accreditation by September 30, 2007. Section 13035 does not prevent additional certifying organizations from becoming recognized by ADP. In fact Section 13035(b) states that additional organizations may be recognized and approved, so long as they are NCCA accredited and meet the other requirement of Chapter 8, Title 9, CCR.

b. Summary of Comment:

Section 13035(b) states “The Department will also approve any other organization that certifies counselors ...” Commentor 2 requested that the term “that certifies” be changed to “to certify”. Commentor 2 stated that the term “that certifies” assumes that the organization already certifies AOD counselors. By changing the term to “to certify” new organizations could apply to become recognized to certify AOD counselors.

ADP Response:

ADP does not interpret “that certifies” to mean that a certifying organization must certify AOD counselors as of September 30, 2007. Section 13035(b) allows any new certifying organization to seek and receive ADP recognition and approval, so long as the organization is NCCA accredited and meets the other requirements of Chapter 8, Title 9, CCR. Thus ADP has not made the requested change because it does not appear to be necessary.

c. Summary of Comment:

Commentor 2 recommended amending the necessity statement for the extension to say that the “extension [*to December 30, 2007*] is needed to ensure that an infrastructure of organizations is created that is more broad-based and can accommodate colleges and universities, for-profit businesses, and other non-profit registered and accredited organizations. This effort to accommodate new as well as existing certifying agencies will allow quality to be maximized and provide a wide range of options relative to costs.”

ADP Response:

ADP has decided not to the date for NCCA certification because such an extension does not appear to be necessary. Nine of the ten certifying organizations listed in Section 13035(a) obtained NCCA accreditation by September 30, 2007. Also Section 13035 does not prevent additional certifying organizations from becoming recognized by ADP. In fact Section 13035(b) states that additional organizations may be recognized and approved, so long as they are NCCA accredited and meet the other requirements of Chapter 8, title 9, CCR. If ADP had extended the time for NCCA accreditation beyond September 1, 2007, it would have considered using the language suggested by the commentor in a necessity statement.

d. Summary of Comment:

Commentor 2 stated that the 10 certifying organizations currently listed in Section 13035 do not provide cultural competency and that additional certifying organizations, that can offer culture specific, gender specific, and faith based training, are needed to provide cultural competency.

ADP Response:

ADP has decided not to the date for NCCA certification because such an extension does not appear to be necessary. Nine of the ten certifying organizations listed in Section 13035(a) obtained NCCA accreditation by September 30, 2007. Also Section 13035 does not prevent additional certifying organizations from becoming recognized by ADP. In fact Section 13035(b) states that additional organizations may be recognized and approved, so long as they are NCCA accredited and meet the requirements of Chapter 8, Title 9, CCR.

ADDITIONAL CHANGES:

ADP did not make any additional changes to the text of the regulations after the close of the 45-day public comment period.

CADPAAC VOTE:

As required by Section 11835 of the Health and Safety Code, on August 2, 2007, the Department mailed to all county alcohol and drug program administrators a notice of intent to present the subject regulations for vote at the quarterly county administrators (CADPAAC) meeting to be held September 28, 2007, in Sacramento, CA. Twenty-four (24) of the county administrators present at the meeting voted to approve the regulations for adoption; none disapproved adoption.

FISCAL IMPACT STATEMENTS:

Anticipated costs or savings to federal funding to the state:

None

Anticipated costs or savings to state agencies:

None

Anticipated costs to county or local government:

None

Anticipated fiscal or economic impact on business:

ADP has made an initial determination that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. In fact, the proposed regulatory action will benefit business throughout the State of California. The proposed extension will prevent certifying organizations from going out of the certification business and will prevent a major workforce disruption in the AOD field that could force AOD programs to reduce services or close completely.

This regulatory action will not affect the ability of California businesses to compete with businesses in other states, as other states already require certification of AOD counselors. This regulatory action will not affect the creation or elimination of jobs, the creation of new businesses, the elimination of existing businesses, or the expansion of businesses currently doing business within the State of California.

Anticipated fiscal or economic impact on small businesses:

This regulatory action will impact small businesses, since most AOD programs are small businesses. However this regulatory action will benefit small business by preventing a major workforce disruption in the AOD field that could force many AOD programs out of business.

Impact on Representative Private Persons or Businesses:

ADP is not aware of any costs impacts that a representative private person or business will necessarily incur in reasonable compliance with the proposed regulatory action. In fact the proposed regulatory action will benefit up to 6,800 individuals currently registered or certified as AOD counselors. This regulatory change will prevent the need for those individuals to re-register with other certifying organizations, pay additional fees, and repeat already completed coursework. Without this regulatory action, many individuals studying to work in the AOD field may be unable to complete their certification and be forced out of the AOD field.

Mandate to Local Agencies or School Districts:

ADP has determined that this regulatory action will not impose any new mandates on school districts or other local governmental agencies or any mandates which must be reimbursed by the State pursuant to Part 7 (commencing with Section 17500), Division 4 of the Government Code.

Other Non-discretionary Costs or Savings Imposed upon Local Agencies:

None.

Impact on Housing Costs:

ADP does not anticipate that this regulatory action will impact housing costs in any way.

CONSIDERATION OF ALTERNATIVES:

Pursuant to Section 11346.5(a)(13) of the Government Code, ADP has determined that no alternative would be more effective in carrying out the purpose for which this regulatory action was taken. ADP has also determined that no alternative would be as effective and less burdensome to affected private persons than the regulatory action taken. ADP has considered all alternatives presented during the public comment period.